

105TH CONGRESS  
1ST SESSION

# H. R. 1651

To amend the Internal Revenue Code of 1986 to require gain recognition in the case of certain transactions that are equivalent to sales of financial instruments.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 16, 1997

Mr. WELLER introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to require gain recognition in the case of certain transactions that are equivalent to sales of financial instruments.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. CONSTRUCTIVE SALES TREATMENT FOR AP-**  
4       **PRECIATED FINANCIAL POSITIONS.**

5       (a) IN GENERAL.—Part IV of subchapter P of chap-  
6       ter 1 of the Internal Revenue Code of 1986 is amended  
7       by adding at the end the following new section:

1 **“SEC. 1259. CONSTRUCTIVE SALES TREATMENT FOR AP-**  
2 **PRECIATED FINANCIAL POSITIONS.**

3 “(a) IN GENERAL.—If there is a constructive sale of  
4 an appreciated financial position—

5 “(1) the taxpayer shall recognize gain as if such  
6 position were sold for its fair market value on the  
7 date of such constructive sale (and any gain shall be  
8 taken into account for the taxable year which in-  
9 cludes such date), and

10 “(2) for purposes of applying this title for peri-  
11 ods after the constructive sale—

12 “(A) proper adjustment shall be made in  
13 the amount of any gain or loss subsequently re-  
14 alized with respect to such position for any gain  
15 taken into account by reason of paragraph (1),  
16 and

17 “(B) the holding period of such position  
18 shall be determined as if such position were  
19 originally acquired on the date of such con-  
20 structive sale.

21 “(b) APPRECIATED FINANCIAL POSITION.—For pur-  
22 poses of this section—

23 “(1) IN GENERAL.—The term ‘appreciated fi-  
24 nancial position’ means any position with respect to  
25 any stock, debt instrument, or partnership interest  
26 if there would be gain were such position sold.

1           “(2) POSITION.—The term ‘position’ means an  
2           interest, including a futures or forward contract,  
3           short sale, or option.

4           “(3) TREATMENT OF LIMITED-TERM INTER-  
5           ESTS.—Except as provided in regulations, the term  
6           position shall not include any interest that has a  
7           term of 3 years or less.

8           “(4) POSITIONS AS TO WHICH GAIN OR LOSS IS  
9           OTHERWISE RECOGNIZED DURING THE TAXABLE  
10          YEAR.—The term position does not include any posi-  
11          tion that—

12                   “(A) is sold or disposed of during the tax-  
13                   able year in a transaction in which gain or loss  
14                   is recognized, or

15                   “(B) is marked to market under section  
16                   475, section 1256, or any other provision.

17          “(c) CONSTRUCTIVE SALE.—For purposes of this  
18          section—

19                   “(1) IN GENERAL.—A taxpayer shall be treated  
20                   as having made a constructive sale of an appreciated  
21                   financial position of the taxpayer (or a related per-  
22                   son) enters into any of the following transactions  
23                   and the transaction has not been closed or termi-  
24                   nated within 1 year of the date it was entered into—

1           “(A) making a short sale of substantially  
2 identical property,

3           “(B) entering into an offsetting notional  
4 principal contract with respect to substantially  
5 identical property,

6           “(C) entering into a futures or forward  
7 contract to deliver substantially identical prop-  
8 erty,

9           “(D) in the case of an appreciated finan-  
10 cial position that is a short sale or a contract  
11 described in subparagraph (B) or (C) with re-  
12 spect to any property, acquiring substantially  
13 identical property, or

14           “(E) to the extent provided in regulations  
15 having prospective effect, entering into 1 or  
16 more other transactions (or acquiring 1 or more  
17 positions) that have substantially the same ef-  
18 fect as a transaction described in any of the  
19 preceding subparagraphs.

20 A constructive sale shall be deemed to occur on the  
21 date that is 1 year after the date on which the  
22 transaction described in subparagraphs (A) through  
23 (E) is entered into.

24           “(2) RELATED PERSON.—A person is related to  
25 another person with respect to a transaction if—

1           “(A) the relationship is described in sec-  
2           tion 267 or 707(b), and

3           “(B) such transaction is entered into with  
4           a view toward avoiding the purposes of this sec-  
5           tion.

6           “(3) SPECIAL RULE FOR DEBT INSTRU-  
7           MENTS.—For purposes of paragraph (1)(A), posi-  
8           tions in interest rates shall be treated as positions  
9           in property which are substantially identical to debt  
10          instruments.

11          “(d) OTHER DEFINITIONS.—For purposes of this  
12          section—

13               “(1) FORWARD CONTRACT.—The term ‘forward  
14               contract’ includes a fully or partially prepaid for-  
15               ward contract.

16               “(2) OFFSETTING NOTIONAL PRINCIPAL CON-  
17               TRACT.—The term ‘offsetting notional principal con-  
18               tract’ means, with respect to any property, an agree-  
19               ment to pay the investment yield (including appre-  
20               ciation) on such property for a specified period in  
21               exchange for the right to be reimbursed for any de-  
22               cline in the value of such property and for other con-  
23               sideration.

24          “(e) SPECIAL RULES.—

1           “(1) TREATMENT OF SUBSEQUENT SALE OF  
2 POSITION.—If—

3           “(A) a taxpayer (or a related person) en-  
4 ters into a transaction described in subsection  
5 (c)(1) with respect to any appreciated financial  
6 position,

7           “(B) such position is subsequently sold or  
8 otherwise disposed of, and

9           “(C) at the time of such sale or disposi-  
10 tion, the transaction described in subsection  
11 (c)(1) remains open with respect to the tax-  
12 payer or any related person,

13 solely for purposes of determining whether the tax-  
14 payer has entered into a constructive sale of any  
15 other appreciated financial position held by the tax-  
16 payer, the taxpayer shall be treated as entering into  
17 such transaction immediately after such sale or  
18 other disposition.

19           “(2) CERTAIN TRUST INSTRUMENTS TREATED  
20 AS STOCK.—For purposes of this section, an interest  
21 in a trust which is actively traded (within the mean-  
22 ing of section 1092(d)(1)) shall be treated as stock.

23           “(3) MULTIPLE POSITIONS IN PROPERTY.—If  
24 there is a constructive sale of a portion of any prop-  
25 erty held by the taxpayer, the determination of the

1 specific property which is deemed sold shall be made  
2 in the same manner as if the constructive sale were  
3 an actual sale; except that property treated as sold  
4 by reason of a prior constructive sale that remains  
5 open shall be disregarded.

6 “(f) REGULATIONS.—The Secretary shall prescribe  
7 such regulations as may be necessary or appropriate to  
8 carry out the purposes of this section.”

9 (b) CLERICAL AMENDMENT.—The table of sections  
10 for part IV of subchapter P of chapter 1 of such Code  
11 is amended by adding at the end the following new item:

“Sec. 1259. Constructive sales treatment for appreciated financial  
positions.”

12 (c) EFFECTIVE DATE.—The amendments made by  
13 this section shall apply to constructive sales after the date  
14 of the enactment of this Act.

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